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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,510	06/05/2001	Hung-Kun Chen	46914-2000	5897
23900	7590	01/04/2006	EXAMINER	
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			DEPPE, BETSY LEE	
			ART UNIT	PAPER NUMBER
			2637	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/874,510	Applicant(s) CHEN ET AL.	
	Examiner Betsy L. Deppe	Art Unit 2637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 2-18, 34, 38-41, 59-62.
 6. ☒ Newly proposed or amended claim(s) 1-28 and 30-35 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 1-28 and 30-35.
 Claim(s) objected to: 29, 36-46 and 50-62.
 Claim(s) rejected: 47-49.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____


 Betsy L. Deppe
 Primary Examiner
 Art Unit: 2637

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed December 14, 2005 have been fully considered but the argument on pages 23-24 regarding the rejection of claims 47-49 are not persuasive. In response to the applicant's argument that claims 47-49 should be allowable because they include the subject matter described in the specification from claim 37, the specification does not describe a system with the recited limitations of claim 47 **and** the limitations of claim 42. Since claim 47 depends from claim 42, the selective frequency hopping system of claim 47 must also include the limitations of claim 42. However, the specification does not describe using the criteria recited in claim 47 with the criteria recited in claim 42. According to pages 24-27 of the specification, the limitations in claim 47 are an alternative embodiment to that in claim 42. Therefore, one skilled in the art is unable to make and/or use the claimed invention and the rejection of claims 47 (and its dependent claims 48 and 49) is maintained for purposes of appeal.

This rejection may be overcome by changing the dependency in claim 47, i.e. change "claim 42" in claim 47, line 1 to "claim 37."

2. The applicant's argument that slide 14 of Chen IEEE slides do not show the coupling relationship between the traffic requirement input and the partition sequence

generator (see page 24 of the response) is persuasive. Therefore, the rejection of claims 59-62 under 35 USC 102(a) is withdrawn for purposes of appeal.

Claim Objections

3. For purposes of appeal, claims 29, 36-46 and 50-62 are objected to because of the following informalities:

- a. claims 29, 36, 38, 48, 52 and 59 do not conform with 37 CFR 1.75(i) which requires that each element or step of the claim be separated by a line indentation. (See MPEP 608.01(m)) The originally filed claims conformed with the requirements but the claims in the amendment have been changed to paragraph form instead of separating each element or step by a line indentation. The respective dependent claims are objected to under the same grounds.
- b. in claim 57, "the reservation status of the time slot and a list of said good channels" should be "a reservation status of a time slot and a list of good channels" since neither claims 55, 52, 51 nor 36 recite "reservation status," "time slot," or "good channels."
- c. in claim 59, "said partition sequence generator" on lines 6-7 should be "a partition sequence generator"; "a partition sequence generator generating a partition sequence" on line 8 should be "said partition sequence generator generating said partition sequence."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 47-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not describe how to designate interference and interference-free events based on the criteria recited in claim 47 in combination with the criteria recited in claim 42. According to pages 24-27, determining interference and interference events based on channel silent time (as recited in claim 47) is another embodiment from determining interference and interference events based on signal power and error detection (as recited in claim 42). This rejection may be overcome by changing "claim 42" in claim 47, line 1 to "claim 37."

Allowable Subject Matter

6. For purposes of appeal, claims 1-28 and 30-35 would be allowed.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Betsy L. Deppe whose telephone number is (571) 272-3054. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272 - 2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Betsy L. Deppe
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Art Unit 2637